

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

ADAM BROWN, on behalf of himself and
all others similarly situated,

Plaintiff,

Case No. 1:23-cv-00374-LY

v.

LEARFIELD COMMUNICATIONS,
LLC, SIDEARM SPORTS, LLC,
UNIVERSITY OF TEXAS AT AUSTIN, and
THE UNIVERSITY OF TEXAS AT AUSTIN
ATHLETICS,

Defendants.

**DEFENDANTS' NOTICE OF SUPPLEMENTAL AUTHORITY IN SUPPORT OF
THEIR MOTION TO DISMISS PLAINTIFF'S COMPLAINT**

Defendant Learfield Communications, LLC and Sidearm Sports, LLC (collectively “Learfield”), by and through their undersigned counsel, hereby give notice of the Memorandum Opinion and Order in *Peterson v. Learfield Communications LLC, et al.*, No. 8:23-cv-146 (Dist. of Neb. Dec. 8, 2023) (Buescher, J.) (attached hereto as Exhibit 1), which supports the arguments Learfield makes in its pending Motion to Dismiss (Doc. 24 at 14-15) and which was issued after briefing on the Motion to Dismiss closed. *Peterson* was a VPPA case filed against Learfield by the same Plaintiffs’ counsel that filed this case, based on a complaint containing similarly deficient allegations.

In *Peterson*, the Court held that Plaintiff did not sufficiently allege he was a “consumer” under the VPPA by virtue of signing up for a free email newsletter, reasoning that “Plaintiff’s mere exchange of personal information and occasional clicks on links contained in the newsletters to videos on the Team Website do not suffice to make Plaintiff a ‘subscriber.’” See Exhibit 1, *Peterson*, No. 8:23-cv-146, at *33. The Court further reasoned:

This case illustrates the uncomfortable fit of the VPPA to free video streaming services. If Plaintiff accessed free videos on the Team Website by simply typing “huskers.com” into his web browser, he would undoubtedly not be a “renter, purchaser, or subscriber of goods or services,” meaning he and members of his class would have no VPPA claim for having his PII allegedly disclosed to Facebook. However, because Plaintiff “subscribes” (in a modern sense unforeseen by the statute) to a free newsletter that contains links to these free videos, which anyone can freely access on the Team Website without first subscribing to the newsletter, Plaintiff argues that he and all other newsletter subscribers are entitled to relief under the VPPA, including not less than \$2,500 in liquidated damages to each class member and injunctive relief. That argument fails not only as a matter of statutory interpretation but also as a matter of common sense.

Id. at *37.

Dated: December 11, 2023

Respectfully submitted,

/s/Rachel Palmer Hooper

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was electronically filed on December 11, 2023 with the Clerk of Court using the CM/ECF system, which will automatically send email notification of such filing to all attorneys of record.

/s/Rachel Palmer Hooper